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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,109	09/04/2001	James Arthur Smith	213267US0PCT	2383

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EXAMINER
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JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

22

<b>Office Action Summary</b>	<b>Application No.</b> 09/926,109	<b>Applicant(s)</b> SMITH ET AL.	
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 11-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed November 15, 2004, has been entered. New claims 22-29 have been added. Thus, the pending claims are 1-8 and 11-29.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-3, 7, 8, 11, 12, 14, and 15 stand rejected under 35 USC 102(b) as being anticipated by JP 58-152037 assigned to Sumitomo Chemical Co. as set forth in section 3 of the last Office Action.

4. Claims 1-3, 7, 8, 11, 12, 14, 15, 18, and 19 stand rejected under 35 U.S.C. 102(b) as being anticipated by JP 58-041972 assigned to Sumitomo Chemical Co., Ltd. as set forth in section 4 of the last Office Action.

### ***Claim Rejections - 35 USC § 103***

5. Claims 16 and 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over either the cited Sumitomo '037 or Sumitomo '972 references as set forth in section 6 of the last Office Action.

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6. Claim 4 stands rejected under 35 USC 103(a) as being unpatentable over either the cited Sumitomo '037 or Sumitomo '972 references in view of US 6,162,848 issued to Lattime et al. as set forth in section 7 of the last Office Action.

7. Claims 5, 6, and 13 stand rejected under 35 USC 103(a) as being unpatentable over either the cited Sumitomo '037 or Sumitomo '972 references in view of US 5,851,625 issued to Smesny et al. as set forth in section 8 of the last Office Action.

8. Claims 20 and 21 stand rejected under 35 USC 103(a) as being unpatentable over the cited Sumitomo '972 reference as set forth in section 9 of the last Office Action.

9. Claim 13 stands rejected under 35 USC 103(a) as being unpatentable over US 5,403,884 issued to Perlinski in view of US 5,851,625 issued to Smesny et al. as set forth in section 10 of the last Office Action.

10. Claim 21 stands rejected under 35 USC 103(a) as being obvious over 5,403,884 issued to Perlinski as set forth in section 9 of the last Office Action.

### ***Response to Arguments***

11. Applicant's arguments filed with the amendment of November 15, 2004, have been fully considered but they are not persuasive.

12. Applicant traverses the above Sumitomo '037 and '972 rejections by asserting that the adhesive composition by the references is employed as a precoat and not an adhesive backcoat (Amendment, pages 14-16). The examiner respectfully disagrees. Note Sumitomo '037, page 3, lines 8-20 and Sumitomo '972, page 3, lines 4-16, which discuss reinforcing the pile tufts by backcoating with a resin. Specifically, the references state, "Among these reinforcing

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techniques, as the most general method, there is a method that spreads a packing composition being constituted by mixing a packing material such as natural or synthetic rubber latex with a filler and other mixtures on the back face of the laying article or if necessary, attaches a woven fabric or forms a thermoplastic synthetic resin film.” Thus, Sumitomo discusses an *adhesive backcoat*, not a precoat, that is employed with an *optional* secondary backing of a woven fabric or thermoplastic film.

13. Additionally, in response to applicant’s assertion that the references teach drying their composition prior to affixing any secondary backing (Amendment, page 14, 1<sup>st</sup> paragraph), it is noted that applicant is referring to the working example of Sumitomo ‘037, which provides an adhesive backcoated carpet *without* the *optional* secondary backing.

14. Furthermore, applicant argues that the teaching in Sumitomo ‘972 at page 9, 2<sup>nd</sup> paragraph suggest a thermoplastic resin such as ethylene performs the function of the adhesive backcoat as presently claimed (Amendment, paragraph spanning pages 15-16). It appears applicant has misread the recitation of Sumitomo ‘972. First, applicant seems to completely ignore the first part of said recitation, which discusses the woven secondary backing. In particular, said recitation clearly teaches an embodiment wherein a woven hemp secondary backing is bonded to primary backing by way of the adhesive backcoat (i.e., inventive composition) before drying said backcoat. Secondly, said recitation also teaches an alternative embodiment wherein said secondary backing is a thermoplastic film. In this case, the adhesive backcoat is dried before application of said film. Hence, applicant’s argument is not persuasive and the above rejections based upon the Sumitomo references are maintained.

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15. With respect to the Perlinski rejections, applicant traverses on the grounds that one would not optimize the teachings of Perlinski and that said reference actually teaches away from the claimed invention (Amendment, page 17-18). In response, it is first noted that this argument is not persuasive with respect to claim 13, which does not limit polymer A to being less than 10% by weight. Secondly, the claimed range of less than 10%, which includes the value 9.99... and the disclosed value of 10% are not believed to be patentable distinct. MPEP 2144.05, II.

*Obviousness of Ranges* states the following:

Generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) (Claimed process which was performed at a temperature between 40°C and 80°C and an acid concentration between 25% and 70% was held to be prima facie obvious over a reference process which differed from the claims only in that the reference process was performed at a temperature of 100°C and an acid concentration of 10%.).

Additionally, MPEP 2144.05, III. *Rebuttal of Prima Facie Case of Obviousness* states the following:

Applicants can rebut a prima facie case of obviousness based on overlapping ranges by showing the criticality of the claimed range. "The law is replete with cases in which the difference between the claimed invention and the prior art is some range or other variable within the claims. . . . In such a situation, the applicant must show that the particular range is critical, generally by showing that the claimed range achieves unexpected results relative to the prior art range." *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990).

A prima facie case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention. *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997) (Applicant argued that the prior art taught away from use of a protective layer for a reflective article having a thickness within the claimed range of "50 to 100 Angstroms." Specifically, a patent to Zehender, which was relied upon to reject applicant's claim, included a statement that the thickness of the protective layer "should be not less than about [100 Angstroms]." The court held that the patent did not teach away from the claimed invention. "Zehender suggests that there are benefits to be derived from keeping the protective layer as thin as possible, consistent with achieving adequate protection. A thinner coating reduces light absorption and minimizes manufacturing time and expense. Thus, while Zehender expresses a preference for a thicker protective layer of 200-300 Angstroms, at the same time it provides the

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motivation for one of ordinary skill in the art to focus on thickness levels at the bottom of Zehender's suitable' range- about 100 Angstroms- and to explore thickness levels below that range. The statement in Zehender that [i]n general, the thickness of the protective layer should be not less than about [100 Angstroms]' falls far short of the kind of teaching that would discourage one of skill in the art from fabricating a protective layer of 100 Angstroms or less. [W]e are therefore not convinced that there was a sufficient teaching away in the art to overcome [the] strong case of obviousness' made out by Zehender.").

Hence, the examiner respectfully disagrees that the claimed range would not be obvious to one skilled in the art or that the Perlinski reference actually teaches away from said claimed range.

Without a showing of unexpected results or other secondary considerations, the above rejections are maintained.

***New Claim Rejections - 35 USC § 103***

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

17. Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Sumitomo '037 reference *or* the cited Sumitomo '972 reference as applied to claims 2 and 3 above.

18. Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Sumitomo '037 reference *or* the cited Sumitomo '972 reference in view of the cited Smesny reference, as applied to claim 13 above.

19. Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Perlinski reference in view of the cited Smesny reference, as applied to claim 13 above.

New claims 22, 23, 27, and 28 limit polymer A to being, at least, 70-99.5% by wt. of ethylene and 0.5-30% by wt. of an ethylenically unsaturated acid, while new claims 24-26 and 29

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limit the proportions of polymer A from 1 to less than 10% by wt. and polymer B from more than 90 to 99% by wt. However, as argued above, the claimed ranges, although outside of the scope explicitly taught by the references, are deemed to be obvious over the cited prior art. Determining an optimum balance of the components of polymer A and the proportions of polymer A to polymer B would be a matter of obtaining the desired properties of the overall latex based upon the amounts of said polymers and the properties that each polymer contributes. Thus, claims 22-29 are rejected as being obvious over the cited prior art.

### *Conclusion*

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

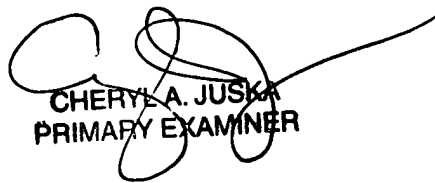
21. Any inquiry concerning this communication or earlier communications from the



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examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
January 12, 2005